

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ALLEN KELLY,	:	CIVIL ACTION NO. 1:12-CV-1245
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
FACILITY MANAGER ERIC BUSH, et al.,	:	
	:	
Defendants	:	

FILED
HARRISBURG, PA
JUN 08 2017
PETER W. ELSH
MARIE ELSH, CLERK
Per _____

ORDER

AND NOW, this 8th day of June, 2017, upon consideration of the court's order (Doc. 9) dated September 12, 2012, wherein the court adopted the report (Doc. 4) of Magistrate Judge Martin C. Carlson, recommending that the court deny the motion (Doc. 3) for leave to proceed *in forma pauperis* and dismiss the complaint (Doc. 1) filed by plaintiff Allen Kelly ("Kelly") pursuant to the three strikes provision of the Prison Litigation Reform Act, see 28 U.S.C. § 1915(g), and wherein the court agreed in full with the magistrate judge's recommendation, denied Kelly's motion (Doc. 3) for leave to proceed *in forma pauperis*, dismissed his complaint (Doc. 1) without prejudice, and directed the Clerk to close this case, (Doc. 9), and further upon consideration of Kelly's instant request (Doc. 13) dated May 30, 2017, wherein Kelly asks the court to cease withdrawing funds from his prison inmate account to satisfy the filing fee *sub judice*, and it appearing that funds have been withdrawn from Kelly's account in error beginning in April of 2016, notwithstanding denial of Kelly's motion (Doc. 3) for leave to proceed *in forma pauperis* and dismissal of this action, cf. 28 U.S.C. § 1915(b)(1) (setting forth installment payment procedure only for those cases in which a prisoner is

permitted to bring his action *in forma pauperis*), and the court finding that Kelly is entitled to a refund of those monies withdrawn to date and an order prohibiting any future withdrawals, see, e.g., Ferrell v. Beard, No. 3:08-CV-370, 2008 WL 919713, at *2 (M.D. Pa. Apr. 3, 2008) (vacating administrative order and directing refund of monies paid when *in forma pauperis* status was denied); see also In re Chandler, 426 F. App'x 77, 78 n.2 (3d Cir. 2011) (*per curiam*) (observing that because the court denied prisoner plaintiff *in forma pauperis* status under the three strikes rule, "the installment payment provisions of section 1915(b) do not apply"), it is hereby ORDERED that:

1. The administrative order (Doc. 7) entered July 9, 2012 is VACATED.
2. The Clerk of Court is directed to cease withdrawal of any funds from Kelly's inmate account in the above-captioned action only.
3. The Clerk of Court is further directed to refund the fee already paid, in the amount of \$96.41, to Kelly forthwith.



Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania